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In re Application of BOUILLOUX-LAFONT et al :
U.S. Application No.: 10/533,848 :
PCT Application No.: PCT/EP02/50787 :
Int. Filing Date: 04 November 2003 : DECISION
Priority Date Claimed: 05 November 2002 :
Attorney Docket No.: 11345/063001 :
For: SELECTING ADVERTISEMENT ON A SET :
TOP BOX IN A TELEVISION NETWORK :

This is in response to applicant's "Petition Under 37 CFR § 1.47(a)" filed 25 January 2006.

BACKGROUND

On 04 November 2003, applicant filed international application PCT/EP02/50787, which claimed priority of an earlier European Patent Office application filed 05 November 2002. A copy of the international application was communicated to the USPTO from the International Bureau on 21 May 2004. The thirty-month period for paying the basic national fee in the United States expired on 05 May 2005.

On 04 May 2005, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 28 September 2005, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that an oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 25 January 2006, applicant filed the present petition under 37 CFR 1.47(a).

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by: (1) an oath or declaration by each applicant on his or her own behalf and on behalf of the nonsigning joint inventors, (2) factual proof that the missing joint inventors refuse to join in the application or cannot be reached after diligent effort, (3) the fee set forth in §1.17(i), and (4) the last known addresses of the nonsigning joint inventors.

With regard to item (1) above, applicant has submitted a declaration signed by the available inventor on his own behalf and on behalf of the nonsigning inventors.

With regard to item (2) above, MPEP 409.03(d) states in relevant part,

Where inability to find or reach a nonsigning inventor "after diligent effort" is the reason for filing under 37 CFR 1.47, an affidavit or declaration of facts should be submitted which fully describes the exact facts which are relied on to establish that a diligent effort was made. . . . The affidavit or declaration of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence such as certified mail return receipt, cover letter of instructions, telegrams, etc., that support a finding that the nonsigning inventor could not be found or reached should be made part of the affidavit or declaration. It is important that the affidavit or declaration contain statements of fact as opposed to conclusions.

The petition states that joint inventors Helene Bouilloux-Lafont, Franck Bachet, and Axel Taldir cannot be reached. However, the petition does not sufficiently demonstrate that a diligent attempt was made to find the inventors. The affidavit of Isabelle Thibaudeau states that two attempts were made to contact the inventors by postal mail. However, the petition does not contain evidence of any other efforts to locate the inventors, e.g. by telephone, facsimile, electronic mail, or through the inventors' former employer and co-workers. Furthermore, although Ms. Thibaudeau's affidavit states that she has not received any forwarding or contact information, the affidavit fails to describe the affirmative steps taken by the affiant to secure such information.

With regard to item (3) above, the requisite \$200.00 petition fee will be charged to Deposit Account No. 50-0591 as authorized in the petition.

With regard to item (4) above, the petition states the last known addresses of the nonsigning inventors.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.47(a) is DISMISSED without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Extensions of time are available under 37 CFR 1.136(a). Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)". No additional petition fee is required.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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